

(2011) 08 RAJ CK 0051
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10669 of 2011

Ankit Kumar Dhaka

APPELLANT

Vs

University of Rajasthan

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Constitution of India, 1950 — Article 13(1), 19(1), 226

Citation : (2011) 08 RAJ CK 0051

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard learned counsel for the parties

2. Petitioner, in this writ petition, has challenged the validity of Section 15(c) of the Constitution of the Rajasthan University Students' Union, 2010 (hereinafter referred to as "the Constitution of the Students' Union of 2010") imposing restriction that No. student shall be allowed to contest election for more than once for any post of office bearers of the same union any time.

3. Brief facts of the case are that Petitioner got admission in University of Rajasthan, Jaipur in MA (Previous) in subject Public Administration for the Sessions 2010-11. He contested Students' Union election for the post of General Secretary and lost. At present, he has been admitted in MA (Final). His grievance is that although he contested Students' Union election last year i.e. Sessions 2010-11 on the post of General Secretary and lost the election, he wants to contest the election of the Students' Union, which is scheduled to be held on 20th August, 2011, but because of eligibility criteria of a candidate to contest election laid down u/s 15 of the Constitution of Students' Union, 2010, he can not contest the election this time. Therefore, he has preferred the present writ petition challenging the validity of Section 15(c) of Constitution of Students' Union, 2010.

4. Learned counsel for the Petitioner argued that Rajasthan University at Jaipur as well as Jai Narain Vyas University at Jodhpur were created by similar legislation by the same legislator and there is No. such restriction in the Constitution of Jai Narain Vyas Students" Union. He also submitted that similar provision is not there in the Constitution of Delhi University Students" Union also. Therefore, the provision of Section 15 (c) be declared as arbitrary and discriminatory. In support of his submission, he also referred the relevant provision of Constitution of Jai Narain Vyas Students" Union and Constitution of Delhi University Students" Union.

5. Learned counsel for the Respondent argued that there is No. similarity between Rajasthan University, Jai Narain Vyas University and Delhi University. Each University is independent and separate from each other. Therefore, provision of one University can not be made applicable in an another University. He also submitted that the provisions of Constitution of Jai Narain Vyas Students" Union are only "proposed amendments", learned counsel for the Petitioner has not placed on record any document to show that the "proposed amendments" of that University have been accepted or not. Therefore, the same are not relevant in the present case, in any way.

6. Learned counsel for the Respondent further submitted that the controversy in the present case is in respect of Section 15(c) and the said provision was considered by Division Bench of this Court in Mukesh Kumar Bhakar v. University of Rajasthan & Anr. (D.B.Civil Writ Petition No. 9306/2011), decided on 26th July, 2011 and the Division Bench upheld the constitutional validity of Section 15 (c) of the Constitution of Students" Union, 2010. Therefore, controversy involved in the present case has been resolved by the Division Bench and present case is fully covered by the judgment delivered by Division Bench in Mukesh Kumar Bhakar"s case (supra). Therefore, the present writ petition is liable to be dismissed in the light of judgment delivered by Division Bench in Mukesh Kumar Bhakar"s case (supra).

7. I have considered the submissions of the learned Counsel for the parties. The main emphasis of learned counsel for the Petitioner to challenge the validity of Section 15 (c) is that there is No. such provision in the Constitution of Jai Narain Vyas Students" Union and Delhi University Student"s Union. His submission is that even if a student has lost election in last election then he is not debarred in contesting the election again this time in aforesaid Universities, whereas as per eligibility criteria laid down in Section 15 (c) of the Constitution of Rajasthan University Students" Union, the Petitioner cannot contest the election again of the same Union or more than once for any post of the Office bearers. Since Petitioner contested the election for the post of office bearer i.e. General Secretary, but he lost and he now again wants to contest election on the post of General Secretary, but in view of Section 15 (c), he cannot contest the election.

8. During course of arguments, learned Counsel for the Petitioner admitted that Division Bench of this Court in Mukesh Kumar Bhakar"s case has already upheld

the validity of Section 15 (c) of the Constitution of Rajasthan University Students' Union, but his contention is that his arguments with reference to provision of other Universities have not been taken into consideration by Division Bench, therefore, this Court should examine the provision of Section 15 (c) independently

9. For ready reference Section 15(c) of the Rajasthan University Students' Union is reproduced as under:

15. Office Bearers of Rajasthan University Students' Union

(a)

(b)

(c) Provided that

No. student shall be allowed to contest for more than one post at a time and more than once for any post of the office bearers of the same Union any time; and not more than twice for the post of an Executive Member.

10. The prayer clause of the writ petition is also reproduced as under:

(i) The Condition 15(c) of Constitution of the Rajasthan University Students' Union, 2010 may kindly be quashed and set aside and the Petitioner may kindly be allowed to contest the election of General Secretary of Rajasthan University Students' Union, Jaipur which is scheduled to be held on 20.8.2011 by filing nomination on 16.8.2011 with all consequential benefits.

(ii) The Hon'ble Court may kindly pass such other order or a direction, which it may deem just, proper and expedient in the facts and circumstances of the present case.

(iii) Costs throughout be also ordered to be awarded to the Petitioners.

From the prayer clause of the writ petition, it is clear that challenge in the present writ petition is in respect of Section 15 (c) of the Constitution of Students' Union, 2010.

11. It is relevant to mention that the Division Bench of this Court considered the same provision i.e. 15 (c) which is under challenge in this writ petition and upheld its constitutional validity. The judgment of the Division Bench is binding on Single Bench. Therefore, it is not necessary to refer and examine the submissions of the learned counsel with reference to provision of Constitutions of other Universities. The Division Bench has considered the recommendations of Lyngdoh Committee, the directions of the Hon'ble Supreme Court dated 22.9.2006 in *University of Kerala (1) v. Council, Principals, Colleges, Kerala and Ors.*, (2006) 8 SCC 304 and only thereafter has come to a conclusion that provision of Section 15 (c) cannot be said to be illegal, arbitrary or unreasonable; nor it can be said to be unconstitutional or violative of Article 13(1)(c) of the Constitution of India. The relevant portion/paras of the judgment of the Division

Bench are reproduced as under:

No doubt about it that the directive issued by the Apex Court in University of Kerala(1) (supra) on 22.9.2006 has been referred to the Larger Bench vide subsequent order dated 11.11.2009 passed in the same case of University of Kerala reported in (2010) 1 SCC 353, however, the Larger Bench has not so far answered the reference made and the directions issued by the Apex Court on 22.9.2006 in University of Kerala (supra) have not been withdrawn as yet. Consequently, the provision of Article 15(c) of the Constitution of the Students" Union cannot be said to be illegal or arbitrary in any manner. It is based upon the recommendation No. 6.5.6 of the Lyngdoh Committee, which has been directed to be implemented by the Apex Court, the same is binding upon the State and Universities. Thus, provision of Article 15(c) cannot be said to be illegal, arbitrary or unreasonable.

Examining the submissions on merits also, we are of the considered opinion that the provision of Article 15(c) has been framed with the objective that though the democratic process of election of Students" Union may take place in the Universities but at the same time, it is not made the routine of the students to contest the election more than once. The restriction cannot be said to be unreasonable or restrictive of the rights to contest election. It is regulatory measure.

Reasonable restriction can always be imposed with respect to the elections of Students" Union. Right to contest election cannot be claimed as fundamental right. It is statutory right and can be subjected to certain conditions. There are instances when the students have made it business to contest the elections time and again. They do not want to pass out of Universities merely for the sake of contesting elections and to contest again and again vitiating entire atmosphere of educational institutions in which objective is different. It is in order to get rid of such vices and also that students should concentrate mainly on studies and they should not make contesting election of students union as their main business in the colleges, the provision appears to have been carved out. It is cannot be said to be unreasonable, illegal and arbitrary in any manner nor can be said to be unconstitutional or violative of Article 19(1)(c) of the Constitution of India.

For the reasons mentioned above, the provision contained in Article 15(c) of the Constitution of the Students" Union cannot in any manner be said to be arbitrary or illegal or unconstitutional or violative of fundamental right of the Petitioner, rather it appears to have been made to ensure that students concentrate more on studies and not to treat the election as their main business in the Universities and to create good academic and disciplined scenario and healthy educational atmosphere in the Universities. Thus, as a matter of fact, the provision seems to be in the interest of students as a whole. Apart from this, the provision has been made pursuant to the directives of the Apex Court and same is in conformity with the report of the Lyngdoh Committee. It does not in any manner infringe any of

the right of the Petitioner much less fundamental right. It is within the domain of the University to make the provision in question and power has been exercised well within the framework of law and it does not suffer from the vice of arbitrariness. Hence, No. case is made out so as to interfere with the provision in question in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India.

Thus, the writ petition being devoid of merit deserves dismissal and it is hereby dismissed. No. costs.

12. Since the controversy involved in the present case has already been considered and resolved by the Division Bench of this Court in Mukesh Kumar Bhakar's case (supra), as referred above, and the said judgment is binding on this Court, therefore, I do not find any merit in this writ petition and the same is, accordingly dismissed with No. order as to cost.